

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 10, 2009 Session

**BLUEGREEN VACATIONS UNLIMITED, INC. v. THE GOVERNOR'S
CROSSING DESIGN AND REVIEW TEAM, ET AL.**

**Appeal from the Chancery Court for Sevier County
No. 05-2-044 John Kerry Blackwood, Senior Judge**

No. E2008-01759-COA-R3-CV - FILED JULY 27, 2009

This appeal involves the validity of a restrictive covenant at Governor's Crossing development in Sevier County, Tennessee. In August of 1998, a Declaration of Covenants, Easements, Restrictions and General Standards of Development (the "Declaration") pertaining to the various tracts of land at Governor's Crossing development in Sevier County was filed with the office of the Register of Deeds. At the same time, a Restrictive Covenant and Agreement (the "Restrictions") also was filed with the Register of Deeds. After Bluegreen purchased a tract of land at Governor's Crossing following foreclosure, Bluegreen filed this lawsuit seeking a declaratory judgment that it was not prohibited by the Declaration or the Restrictions from building, marketing, or selling timeshare units on this land. Following a trial, the Trial Court determined that the Declaration was not ambiguous and that this document gave defendant Fairfield Resorts Inc., the exclusive right to develop and market timeshares at Governor's Crossing until December 31, 2050. Bluegreen appeals, and we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Chancery Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. McCLARTY, J., joined.

Robert L. DeLaney and Ben H. Cantrell, Nashville, Tennessee, for the Appellant, Bluegreen Vacations Unlimited, Inc.

Doris C. Allen, Knoxville, Tennessee, for the Appellee, Fairfield Resorts, Inc.

OPINION

Background

This declaratory judgment action was filed by Bluegreen in February 2005. The complaint challenges the validity of a restrictive covenant at Governor's Crossing in Sevier County, Tennessee. Bluegreen is a parcel owner at Governor's Crossing. Bluegreen sued The Governor's Crossing Design and Review Team, its members, as well as owners of the various other parcels of land at Governor's Crossing, including Fairfield Resorts, Inc. ("FRI" or "Fairfield").¹ According to the complaint:

This controversy pertains to the enforceability of certain restrictions imposed by the Defendant, FRI and the ownership and marketing of time share units and/or condominiums at the Governor's Crossing Subdivision which is located in Pigeon Forge, Sevier County, Tennessee. . . .

On or about October 27, 2004, Bluegreen purchased Tract No. 1 in Governor's Crossing subdivision. Additionally, Bluegreen has purchased two (2) tracts immediately adjacent to Governor's Crossing. Bluegreen has purchased Tract No. 1 at Governor's Crossing and the two (2) adjacent tracts for the purpose of constructing and marketing time share units.

This use of Tract No. 1 and the two (2) adjacent tracts adjacent to Governor's Crossing by Bluegreen and its marketing and sale of these timeshare units creates a bona fide controversy requiring a declaration of . . . Bluegreen's rights and obligations in this connection. Bluegreen's construction of these time share units and the subsequent marketing and sale of them will be opposed at least by the Defendant, FRI . . . This opposition will be predicated upon the existence of certain restrictions FRI sought to impose on the construction, marketing and sale of time shares at the Governor's Crossing Subdivision when [FRI] purchased an interest in Tract No. 11B.

More specifically, in 1997 the Defendant, CK of PF, Inc., recorded the Plat in Sevier County, Tennessee consisting of eighteen

¹ Although there were numerous defendants when this case originally was filed, this appeal involves only defendant Fairfield Resorts, Inc.

(18) tracts entitled Subdivision of CK of PF, Inc.², property of record in Large Map Book 1, Page 90, Register's Office for Sevier County, Tennessee. Subsequently, the Defendant, CK of PF, Inc., was the ultimate seller of certain tracts in Governor's Crossing to certain of the named defendants.

On August 21, 1998, . . . [FRI] purchased an interest in Tract No. 11B³ for the purpose of constructing a time share unit project. In August 1998, certain tract owners at Governor's Crossing executed a Declaration of Covenants, Easements, Restrictions and General Standards of Development (the "Declaration"). The Declaration [was] recorded on August 21, 1998 . . . [in the] Register's Office for Sevier County

The Declaration was created "to provide developers a common framework for the design and construction process". The Declaration is "to run with the land and shall be binding on all parties claiming under them." The Declaration contained a restriction limiting the development of time share units at Governor's Crossing. . . .

* * *

Two (2) other documents were executed and recorded on the same date (August 21, 1998) as the Declaration which are relevant to the enforceability [of the Declaration]. One of these documents is entitled "Restrictive Covenant and Agreement" (the "Restrictions"). The Restrictions are recorded in . . . [the] Register's Office for Sevier County. . . .⁴

The other document executed on August 21, 1998 relevant to the enforceability of Paragraph 2.2 of the Declaration is a document entitled "Marketing Agreement". The Marketing Agreement is evidenced by a Memorandum of Agreement recorded in Book M337,

² The complaint identified the original owner, CK of PF, Inc., as an "inactive Tennessee corporation" which, at the time the complaint was filed, still owned Tract No. 16 at Governor's Crossing.

³ According to FRI's brief on appeal, FRI actually owns Tract Nos. 9CR, 9D, 11 and 11B.

⁴ The Restrictions were recorded on August 21, 1998, and originally provided that "[t]he restrictions imposed by this Section shall expire (5) years from the date hereof." The relevant portion of the Restrictions are quoted later in this Opinion.

The Marketing Agreement states in relevant part:

Seller [CK of PF, Inc.] hereby grants to FCI the exclusive right to conduct VOI [Vacation Ownership Intervals] sales solicitations and sales and marketing of VOI's and other vacation related products at any of the Seller's Properties. Seller further agrees that no portion of any of the Seller's Properties shall be used by any other person or entity for the purpose of conducting vacation or VOI sales solicitation or vacation or VOI sales or marketing. Seller grants this right in consideration [of] FCI's purchase of the Governor's Crossing Property from Seller. . . .

On April 12, 2002, the parties to the Restrictions executed a FIRST AMENDMENT TO RESTRICTIVE COVENANT AND AGREEMENT ("Amendment to Restrictive Covenant"). The Amendment to Restrictive Covenant was recorded on April 28, 2002 . . . [in] the Register's Office for Sevier County. . . . The Amendment to Restrictive Covenant modified Section 2 of the Restrictions as follows:

Restricted Lands. The definition of Restricted Lands in Section 1(b) of the Restrictive Covenant is hereby amended to delete the Property and other property within Governor's Crossing that Fairfield or its successors, subsidiaries or affiliates acquires, such that Fairfield may take title to such properties and improve and operate such properties as a Timeshare Project.

The Amendment to Restrictive Covenant modified Section 37 of the Restrictions as follows:

Restrictive Covenant. The terms of the Restrictive Covenant is hereby extended to expire on the date that is five (5) years from the date hereof [i.e., April 12, 2002].

(Footnotes added; original paragraph numbering omitted).

Bluegreen then claimed that in October of 2002, Greene County Bank obtained by foreclosure Tract No. 1 at Governor's Crossing. Tract No. 1 and two lots adjacent to Governor's Crossing then were purchased by Bluegreen. Bluegreen asserted that the only document that was binding on Greene County Bank and, therefore, on Bluegreen, was the original Restrictions which had expired by August 21, 2003. Thus, Bluegreen maintained that it was permitted to build timeshares on Tract No. 1 in Governor's Crossing. Among other things, Bluegreen sought a declaratory judgment that it was entitled to build, market and sell timeshares.

As noted in the complaint, on August 21, 1998, the developer of Governor's Crossing filed with the Sevier County Register of Deeds a "Declaration of Covenants, Easements, Restrictions and General Standards for Development." The Declaration is approximately 39 pages long. Section 2 of the Declaration sets forth permitted and prohibited uses of the various tracts of land. As relevant to this appeal, Section 2.2 discusses prohibited uses and provides as follows:

2.2 TRACT USE

* * *

Prohibited Uses. These include any activity that shall, in the opinion of the [Design and Review Team], be incompatible with the goals, objectives, and design/operating criteria established for Governor's Crossing. A development shall be denied occupancy if it fails to comply with [a] local zoning ordinance or with these standards and covenants.

Additionally, no Owner or Ground Lessee shall allow any party other than Fairfield Communities, Inc., its subsidiaries or affiliates, or their respective successors and assigns (collectively "FCI"), to use all or any portion of such Owner's or Ground Lessee's tract for the purpose of conducting vacation ownership interest or vacation sales or vacation related sales or marketing so long as FCI owns, operates or maintains (whether directly or indirectly) a timeshare resort at the Property. All proceeds of such sales and marketing efforts shall belong exclusively to FCI and no Owner or Ground Lessee shall have any claim with regard to such proceeds. Owners and Ground Lessees covenant and agree (i) that this sales and marketing covenant in favor of FCI shall be included in any lease/sublease of all or any portion of his/its property, but acknowledge that the failure to do so shall not cause such covenant not to be binding on and effective against a lessee/sublessee; and (ii) an Owner's or Ground Lessee's failure to comply with the sales and marketing covenant will result in irreparable harm to FCI that cannot be adequately compensated by monetary damages, thereby entitling FCI to injunctive relief. . . .

The Declaration also provides that this provision shall remain in effect until December 31, 2050.

As set forth in the complaint, a “Restrictive Covenant and Agreement” also was filed with the Sevier County Register of Deeds Office on August 21, 1998. The Restrictions state in pertinent part as follows:

Section 2. Restrictive Covenant. (a) Neither Developer, any Remaining Owner nor any Affiliate of Developer shall use or allow any Restricted Lands to be used, or construct or allow to be constructed thereon any improvement, for the operation of a Timeshare Project. The restriction imposed by this Section shall expire five (5) years from the date hereof.⁵ Developer, Remaining Owners and Affiliates acknowledge that this restriction is essential to Fairfield’s business and profitability and further acknowledge that the application or operation thereof shall not involve a substantial hardship upon the future business of Developer, any Remaining Owners or any Affiliate of Developer. . . .

(b) Developer agrees that Fairfield shall have the exclusive right to market vacation ownership or related products at any property owned by Developer or any Affiliate of the Developer, provided that upon the sale of any property owned by Developer or any Affiliate (other than to an Affiliate), the purchaser or any successor in title shall not be required to permit representatives of Fairfield to come onto the property pursuant to this provision, but such purchaser or successor in title (i) shall not permit any other person to market vacation ownership or related products on the property and (ii) shall allow Fairfield to do so if such purchaser or successor in title permits any unrelated party to market products on its property.

(Footnote added).

A trial took place on October 9, 2007. Following the trial, the Trial Court entered an Order stating as follows:

Bluegreen Vacations, Unlimited [Plaintiff] filed this declaratory judgment action requesting the Court to . . . [do] the following, to wit:

⁵ As noted previously, the Restrictions were amended to provide for a five year effective date beginning April 12, 2002, which was the effective date of the amendment.

- (1) Enter a judgment that paragraph 2(a) and 2(b) of the Restrictions amend paragraph 2.2 of the Declaration.
- (2) Enter a judgment that the Restrictions contained in the Declarations, Restrictions and Amendment to Restrictive Covenant have expired and do not prohibit Bluegreen from constructing time share units on Tract No 1 at Governor's Crossing Subdivision.
- (3) Enter a judgment declaring that Restrictions contained in the Declaration, Restrictions and Amendment to Restrictive Covenants and Marketing Agreement are personal agreement[s] and that they do not "touch and concern" or run with land and accordingly do not prohibit Bluegreen from marketing and selling timeshare units on Tract 1.

The factual issues are not in dispute. In October 1997, Fairfield entered into a Purchase Agreement with the Developer of Governor's Crossing to purchase 2 tracts of land within the development. As the closing approached, the Developer and the current land owners within Governor's Crossing executed a Declaration of Covenants, Easements and Restrictions (Exhibit 15). This document was executed pursuant to the Purchasing Agreement between Fairfield and the Developer to grant to Fairfield the exclusive right to market vacation ownership and/or related products at any property owned by Seller (Developer). Exhibit 2, Section 2.2 of Exhibit 15 provided for Permitted and Prohibited Uses within the development. The Section provides as follows:

Additionally, no owner or ground lessee shall allow any party other than Fairfield Communities, Inc. . . . to use all or any portion of such owner's or ground lessee's tract for the purpose of conducting vacation ownership interest or vacation sales or related sales or marketing so long as FCI operates or maintains . . . a timeshare resort on the property.

Section 7.1 of Exhibit 15 (Declaration) provides that the Declaration and any amendments or supplements shall remain in effect from the date of recordation until December 31, 2050.

Section 7.2 of Exhibit 15 sets forth the procedure for any amendments to Exhibit 15.

Exhibit 15 was recorded on August 21, 1998. The Warranty Deed from the Developer to Fairfield was recorded shortly thereafter on August 21 as well as Restrictive Covenants (Exhibit 17). The Restrictions were executed by all tract owners, and the respective developers of Governor's Crossing and Fairfield.

Section 2 of Exhibit 17 provides as follows:

(a) Neither Developer, any remaining owner nor any affiliate of developer shall use or allow any restricted land to be used, or construct or allow to be constructed thereon any improvement for the operation of a timeshare project. The Restriction imposed by this section shall expire five (5) years from the date hereof.

2.b Developer agrees that Fairfield shall have the exclusive right to market vacation ownership or related products at any property owned by developer . . . , provided that upon the sale of any property owned by developer . . . [the purchaser] shall not be required to permit representatives of Fairfield to come onto the property pursuant to this provision, but such purchaser . . . (i) shall not permit any other person to market vacation ownership . . . on the property and (ii) [shall] allow Fairfield to do so if such purchaser . . . permits any unrelated party to market products on its property.

On April 12, 2002, the Developer, Fairfield and tract owners in Governor's Crossing executed a First Amendment to Restrictive Covenant (Exhibit 17) extending the restriction an additional five years.

On October 24, 2004, Bluegreen Vacation Inc. purchased Tract 1 of Governor's Crossing after Green Bank foreclosed Tract 1

due to the developer's default [on] a loan from the Bank of Hamblen. A substitute trustees deed to Bluegreen was recorded in the Register's Office in Sevier County. The deed referenced Exhibit A which included Exhibits 15 and 17 plus a Memorandum of Agreement between Developer and Fairfield.

Findings

Although the plain language of the Declarations (Exhibit 15) and the Restrictive Covenant (Exhibit 17) are unambiguous, the Court feel[s] that their interpretation can not be determined unless they are considered in context. The Court finds that it is necessary to go beyond the literal terms of the documents and consider the situation in relation of the parties. The Court finds that the Exhibits' intent should be interpreted in the light of the parties negotiations, circumstances surrounding the documents and the construction of the parties.

Applying those guidelines, the Court finds based upon the testimony and the evidence that Fairfield and the Developer intended to grant Fairfield an exclusive right to market timeshares within Governor's Crossing. To accomplish that goal, several documents were executed by the parties. The Court finds that the Declaration (Exhibit 15) by its clear terms granted Fairfield the exclusive rights to market time shares within the development. Section 7.3a of the Declaration (Exhibit 15) provides that the provisions of 2.2 of this Declaration relating to marketing rights is inviolable and not subject to deletion, amendment or modification without the written consent of the benefitted party (Fairfield). The extensive correspondence between the representative of Fairfield and the Developer indicates the intent to grant Fairfield the exclusive rights to market time shares. The Court further finds that Exhibit 17 does not amend the clear provisions of the Declaration (Exhibit 15). The Declaration contains provisions for the amendment process of the Declaration in Section 7.2. It is clear that those provisions pursuant to 7.2 [of] Exhibit 15 have not operated to amend the Declaration. Secondly, Exhibits 15 and 17 were executed simultaneously and there is no provision in Exhibit 17 that refers to Exhibit 15 or any purpose to amend Exhibit 15.

Therefore the Court concludes that Fairfield has the exclusive rights to market timeshares and related products in Governor's

Crossing pursuant to the Declaration until 2050. The cost of this cause is assessed against Bluegreen. . . .

Bluegreen then filed a motion to alter or amend the judgment.⁶ The Trial Court denied the motion but did make some additional findings. Specifically, the Trial Court stated as follows:

The Court reaffirms its findings and decision as contained in the Order entered on October 23, 2007 and adopts those findings and the decisions contained therein by this reference as if fully set forth in this Order.

The Court has determined that it is appropriate to make additional findings in order to clarify the decision previously entered in this case and to document the final nature of this Order. The Court has previously found that the Restrictive Covenants (Exhibit 17) did not amend the Declaration . . . and held that the language of section 2.2 of the Declaration prohibited Bluegreen from using all or a portion of Tract 1 in Governor's Crossing for the purpose of conducting vacation ownership interest or vacation sales or relates sales or marketing within the timeframes provided in the Declaration. The Court further found and held that Fairfield had the exclusive right to market timeshares and related products in Governor's Crossing pursuant to the Declaration. The Court now further finds and holds that section 2.2 of the Declaration prohibits not only sale and marketing of vacation ownership interest, but also conducting of vacation ownership interest within Governor's Crossing by anyone other than Fairfield and its successors and assigns as specified in the Declaration. The term "conducting vacation ownership interest" includes doing business as a timeshare, administering or managing a timeshare interest or product and operating a timeshare resort or product. This prohibition is in addition to the prohibition against conducting vacation sales or related sales or marketing previously addressed by this Court's Order of October 23, 2007. . . .

Bluegreen appeals raising the following issue: "[W]hether Bluegreen is entitled to develop Timeshares at Governor's Crossing."

⁶ Bluegreen filed an appeal after the entry of the judgment in October 2007. We dismissed the first appeal for lack of a final judgment. Once a final judgment was entered, this appeal followed.

Discussion

In *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885 (Tenn. 2002), our Supreme Court stated:

In “resolving disputes concerning contract interpretation, our task is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the contractual language.” *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). This determination of the intention of the parties is generally treated as a question of law because the words of the contract are definite and undisputed, and in deciding the legal effect of the words, there is no genuine factual issue left for a jury to decide. 5 Joseph M. Perillo, *Corbin on Contracts*, § 24.30 (rev. ed. 1998); *Doe v. HCA Health Services of Tenn., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001).

A court’s initial task in construing a contract is to determine whether the language of the contract is ambiguous. Once found to be ambiguous, a court applies established rules of construction to determine the parties’ intent. “Only if ambiguity remains after the court applies the pertinent rules of construction does [the legal meaning of the contract] become a question of fact” appropriate for a jury. *Smith v. Seaboard Coast Line R.R. Co.*, 639 F.2d 1235, 1239 (5th Cir. 1981). . . .

The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern. *Empress Health & Beauty Spa, Inc. v. Turner*, 503 S.W.2d 188, 190 (Tenn. 1973). The intent of the parties is presumed to be that specifically expressed in the body of the contract. “In other words, the object to be attained in construing a contract is to ascertain the meaning and intent of the parties as expressed in the language used and to give effect to such intent if it does not conflict with any rule of law, good morals, or public policy.” 17 Am. Jur. 2d, *Contracts*, § 245, quoted in *Turner*, 503 S.W.2d at 190. If clear and unambiguous, the literal meaning of the language controls the outcome of contract disputes.

Planters Gin, 78 S.W.3d at 889-890.

Initially, we note that both parties argue that the documents at issue are not ambiguous and, therefore, that our review of the Trial Court’s decision presents a question of law. We agree. With respect to legal issues, our review is conducted “under a pure *de novo* standard of

review, according no deference to the conclusions of law made by the lower courts.” *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). While both parties agree that the documents are not ambiguous, they, of course, differ on their interpretation of what these unambiguous documents mean.

Bluegreen acknowledges that when it obtained Tract 1 at Governor’s Crossing, the deed specifically stated that the property was subject to the restrictions contained in both the Declaration and the Restrictions. Thus, Bluegreen certainly was aware of the existence of these restrictions when it purchased property in Governor’s Crossing.⁷

Unfortunately, Bluegreen’s statement of the issues in its brief does nothing to inform this Court as to how it claims the Trial Court was in error, stating simply that the issue is “whether Bluegreen is entitled to develop Timeshares at Governor’s Crossing.” This stated issue is what was the ultimate issue placed before the Trial Court for determination. Unfortunately, it does not direct this Court to any specific alleged errors by the Trial Court other than in its ultimate decision when it answered this issue with a “no”.⁸

It appears that Bluegreen’s primary argument is that the Restrictions effectively amended the Declaration and, therefore, the only restriction on marketing and selling timeshares is the five year prohibition contained in the Restrictions. As did the Trial Court, we disagree. To begin with, the Restrictions in no way state that they are intended to amend the Declaration which was filed the same day. If the drafters intended to amend the Declaration, then that document easily could have been changed. It would make no sense to amend the Declaration by filing an amending document the very same day.⁹ In addition, the Declaration applies to the parcel owners at Governor’s Crossing and only to the land at Governor’s Crossing. The Restrictions, however, prohibit CK of PF, Inc., and its affiliates from competing with FRI in the timeshare industry for a period of five years within 25 miles from the boundaries of Governor’s Crossing. Likewise, the parties ratifying the Declaration and the Restrictions were not identical. Accordingly, we agree with the Trial Court’s determination that the Restrictions do not amend the Declaration.

Both parties agree that the Restrictions have expired. Bluegreen argues that because the Restrictions have expired, it is now free to build a timeshare because there is no prohibition in the Declaration against constructing a timeshare building. We agree with Bluegreen to a point. Section 2.2 of the Declaration does not prohibit Bluegreen from constructing a building on its

⁷ In its brief on appeal, Bluegreen states that with respect to Tract 1 at Governor’s Crossing, “the chain of title throughout these transactions [i.e., the foreclosure and Bluegreen’s later purchase] reflects certain restrictions on the collateral pledged for the loans which include the [Declaration and Restrictions].”

⁸ Fairfield argues on appeal that this Court should hold that Bluegreen has waived review of any issues due to the vagueness of its statement of the issues. Exercising our discretion, we will attempt to ascertain the specifics of Bluegreen’s issues.

⁹ Not only were these documents filed the same day, they were both filed at 3:30 p.m.

property at Governor's Crossing. However, as the Trial Court correctly pointed out, pursuant to Section 2.2 of the Declaration "Fairfield has the exclusive rights to market timeshares and related products in Governor's Crossing . . . until 2050." We further agree with the Trial Court that the Declaration unambiguously:

[prohibits] Bluegreen from using all or a portion of Tract 1 in Governor's Crossing for the purpose of conducting vacation ownership interest or vacation sales or relates sales or marketing within the time frames provided in the Declaration, [and that] section 2.2 of the Declaration prohibits not only sale and marketing of vacation ownership interest, but also conducting of vacation ownership interest within Governor's Crossing by anyone other than Fairfield and its successors and assigns as specified in the Declaration. The term "conducting vacation ownership interest" includes doing business as a timeshare, administering or managing a timeshare interest or product and operating a timeshare resort or product.

Thus, while Bluegreen can build on its property (assuming it otherwise is permitted), it still must comply with the restrictions set forth in the Declaration as found by the Trial Court.

The final issue is Bluegreen's claim that the Trial Court improperly admitted parol evidence at trial. We note that this issue is not set forth in Bluegreen's statement of the issues. At trial, the Trial Court admitted a limited amount of testimony to consider the circumstances of the parties at the time the relevant documents were executed. Bluegreen claims this evidence violated the parol evidence rule. "Under the parol evidence rule parol evidence is inadmissible to contradict, vary, or alter a written contract where the written instrument is valid, complete, and unambiguous, absent fraud or mistake or any claim or allegation thereof." *See Airline Const. Inc. v. Barr*, 807 S.W.2d 247, 259 (Tenn. Ct. App. 1990).

Fairfield argues that this evidence was not used in any way "to contradict, vary or alter" the terms of the documents and, therefore, was admissible. We agree that the admitted testimony did not alter, vary, or contradict the language of the Declaration. Nevertheless, we need not reach this issue because we agree with the Trial Court's ultimate conclusion that Section 2.2 of the Declaration is not ambiguous and applies to Bluegreen. Therefore, even if the Trial Court should not have admitted this testimony, an issue we need not and do not address, its admission was harmless error as the unambiguous Declaration prohibits exactly what the Trial Court determined it prohibited.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Chancery Court for Sevier County for collection of the costs below. Costs on appeal are taxed to the Appellant, Bluegreen Vacations Unlimited, Inc., and its surety, for which execution may issue, if necessary.

D. MICHAEL SWINEY, JUDGE